

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

TERRY JOHNSON,)	8:08CV135
)	
Plaintiff,)	
)	
v.)	MEMORANDUM
)	AND ORDER
RYAN MHUR, et al.,)	
)	
Defendants.)	

This matter is before the court on Plaintiff's Motion for an Extension (filing no. [15](#)), Motion to Appoint Counsel (filing no. [16](#)) and Motion to Extend and to Appoint Counsel (filing no. [20](#)).

On July 18, 2008, the court informed Plaintiff of his obligation to pay the \$455.00 appellate filing fee if he wished to appeal the Judgment in this matter. (Filing No. [14](#).) The court permitted Plaintiff 30 days in which to withdraw his Notice of Appeal, which would relieve him of his obligation to pay the appellate filing fee. If Plaintiff withdrew his Notice of Appeal, the appeal would not proceed. (*Id.*) Since that time, Plaintiff has been released from custody. However, Plaintiff has not paid the \$455.00 filing fee,¹ despite having nearly three months in which to do so. In light of this, Plaintiff's Notice of Appeal will not be allowed to proceed. In addition, Plaintiff's Motions to Extend deal with getting additional time in the "law library," but because Plaintiff has been released from custody, these Motions are denied as moot.

Plaintiff also seeks the appointment of counsel, presumably for his appeal. (Filing Nos. [16](#) and [20](#).) However, the court cannot routinely appoint counsel in civil

¹Plaintiff has not sought leave to proceed in forma pauperis on appeal and was not previously granted in forma pauperis status in this matter.

cases. In *Davis v. Scott*, 94 F.3d 444, 447 (8th Cir. 1996), the Eighth Circuit Court of Appeals explained that “[i]ndigent civil litigants do not have a constitutional or statutory right to appointed counsel. . . . The trial court has broad discretion to decide whether both the plaintiff and the court will benefit from the appointment of counsel” *Id.* (quotation and citation omitted). No such benefit is apparent here. The requests for the appointment of counsel are denied.

IT IS THEREFORE ORDERED that:

1. Plaintiff’s Motion to Extend (filing no. 15) and Motion to Extend (filing No. 20) are denied as moot.
2. Plaintiff’s Motions to Appoint Counsel (filing nos. 16 and 20) are denied.
3. Plaintiff’s appeal is dismissed for failure to pay the appellate filing fee. The Clerk of the court shall not process the appeal to the Eighth Circuit Court of Appeals.

October 7, 2008.

BY THE COURT:

s/Richard G. Kopf
United States District Judge